IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6012 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVNA EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MR DAKSHESH MEHTA FOR M/S.VYAS ASSOCIATES for Petitioner

MR IM PANDYA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/01/2001

ORAL JUDGEMENT

Heard the learned counsel for the parties. Perused relevant papers on record.

2. The petitioner is running Bhavna Higher Secondary Vidyalaya and it is having standard of 8th, 9th and 10th in science stream. The petitioner institution has also

got class for 11th and 12 standard in science stream. On advertisement published by the Government for making an application for opening the higher secondary classes in various stream including science stream. The petitioner made an application for opening one class of 11th standard in science stream with grant-in-aid for the academic year 1997-98. The application of the petitioner sent to the Government was not in time and academic year has already started. Hence, the Government decided that sanction to open class for 11th stndard in science stream will be given from June, 1998. However, the petitioner was required to make an application for starting class for 11th standard in science stream with effect from June, 1998. When the advertisement was published by the respondent no. 2 - Commissioner of Higher Education, office of the Joint Director of Education (10 + 2), the petitioner made another application as intimated in the letter dated 15-11-1997 within the prescribed time limit. The petitioner by the letter 26-7-1999 was informed that the petitioner can start classes of 11th and 12th standard in science stream without grant. The petitioner has challenged this decision of the Government by means of this petition.

3. Learned counsel for the petitioner submitted that Finance Department of the Government of Gujarat has taken a decision and the Government has agreed to give permission to the petitioner to start classes of 11th and 12th standard in science stream from June, 1998 by the letter dated 15-11-1997. Another ground of the petitioner is that one Bimal Merium High School situated in village Gamdi similarly situated like the petitioner had also made an application for opening classes for 11th and 12th standard in general stream for the year 1998-99 and the permission was given on 1-10-1998. However, the petitioner has not been granted permission. It is further submitted that another school namely HID Parekh High School, Kheda has also been granted permission with grand-in-aid facility from June, 1998 for science stream by the Government letter dated 25-8-1998. As such, aforesaid action of the respondents is discriminatory, illegal and arbitrary and is not sustainable in the eye of law.

4. In the affidvit-in-reply filed by the Jt. Director of Education, Gujarat State, Gandhinagar, it is stated that the education department sent a letter to the petitioner on 15-11-1997 wherein it is stated that the application was received by the respondents after the time limit after starting academic year for the year 1997-98. For starting new higher secondary school fresh

advertisement would be published issued and the school was required to give an application for obtaining sanction. After scrutiny the application made by the petitioner was found to be right and correct in all respects and according to law the permission was to be granted from June, 1998. It was also stated that another letter dated 17-7-1999 was sent to the petitioner informing the petitioner that if the petitioner started his class for the academic year 1998 and on the basis of no-grant petitioner wanted to run the school the department may look into the matter. By the letter dated 26-7-99 the Commissioner of Higher Education, again informed the petitioner granting the permission on nongrant-in-aid basis and no reply was received from the petitioner's school. So far as the argument regarding discrimination on the part of the respondents is concerned, it is stated that Bimal Merium High School, Gamdi is a girls high school and on the basis of the resolutions dated 1-9-1997 and 4-11-1997 the said school was given 100% grant and HID Parekh High School was also given 100% grant. The petitioner's school was not eligible to get grant from the Government. The Commissioner of Higher Education by the letter dated 26-7-1999 reminded the petitioner that if the petitioner is prepared to start the higher secondary classes of no-grant permission will be given, for which the school management has not replied to so far.

5. In the rejoinder affidavit, it is stated that the Government of Gujarat has passed the resolution dated 1-9-1997 whereby the permission for opening the school was granted to the high school for girls. In para 2 of the aforesaid resolution, the permission for science stream for higher secondary school was also required to be granted. As such, the contention of the learned counsel for the petitioner is that the case of the petitioner is exactly identical to the case of HID Parekh High School for which permission has been granted and nothing is stated as how and why the petitioner was not eligible for getting permission to opening classes for 11th and 12th standard in science stream.

6. After going through the papers and record, it appears that the Finance Department of Government of Gujarat has agreed to give 100% grant to open the classes for 11th and 12th in science stream from the academic year 1998. It does not appear from the affidavit-in-reply filed on 15-10-1999 that the permission granted by the Finance Department of the State Government on 15-10-1999 was cancelled. Learned A.G.P. produced the original record in order to show that by the

note dated 11-11-1998 the Secretary, Finance Department has taken the decision that the petitioner can start the classes for 11th and 12th standard in science stream from the academic year 1998 without any grant-in-aid facility. But it does not appear from the original record that the said decision was intimated to the petitioner at all. There is nothing on record to show that this decision has been taken for giving reasonable opportunity of being heard to the petitioner and about this decision the petitioner has not been informed and this is a unilateral decision to give reasonable opportunity of being heard to the petitioner. That should not be the stand.

7. In the facts and circumstances of the case, I think it just and proper to direct the State Government to reconsider the matter and decide as to whether the petitioner is entitled to run the institution having classes of 11th and 12th standard in science stream from June, 1998. It is stated by the learned counsel for the petitioner that the petitioner has already started the classes of 11th and 12th standard from academic year 1999. The respondents shall take appropriate decision in accordance with law after considering the facts that sanction has already been given by the Finance Department by the letter dated 15-11-1997, the resolution to grant-in-aid to girls and science stream and other institutions have ben granted grant-in-aid permission and after giving reasonable opportunity of being heard, within one month from the date of receipt of a certified copy of this order.

8. With the aforesaid observations and directions, this petition is disposed of. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/